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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE
ART UNIT 3643
Examiner Richard Thomas Price, Jr.

Mark A. Poland

CASE 494

SERIAL NO. 10/620,138

FILED July 14, 2003

SUBJECT CRUSTACEAN SHELLING TOOL AND PROCESS FOR USE THEREOF

THE COMMISSIONER OF PATENTS AND TRADEMARKS
WASHINGTON, D.C. 20231

SIR:

REMARKS IN RESPONSE TO OFFICE ACTION

The following remarks are in response to the outstanding Office Action mailed January 2, 2005, in the above-identified patent application.

The first Office Action in this application contained a restriction requirement to which applicant responded on March 1, 2004. That response included arguments traversing the restriction requirement, along with a provisional election of claims 9-15 comprising the Examiner's Group II claims grouping. The second Office Action was silent as to applicant's previously-filed arguments in traverse of that restriction requirement. In response to that Office Action, applicant again requested reconsideration of the restriction requirement for the reasons set forth in the traverse filed March

1, 2004. In the presently outstanding Office Action, the Examiner has again ignored applicant's two previous requests for reconsideration of the restriction requirement. In accordance with the provisions of MPEP 821.01, the restriction requirement should have been reconsidered and either withdrawn or made final in the second Office Action. It is once again respectfully requested that the Examiner reconsider the previously-issued restriction requirement for the reasons set forth in the traverse filed March 1, 2004, and advise applicant that the requirement has either been withdrawn or made final, in order that appropriate action may be taken.

Applicant notes with appreciation the allowability of claim 12, subject to being rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Provisionally-elected claims 9-11 and 13-15 stand rejected under 35 U.S.C. 103(a) as being obvious and therefore unpatentable over U.S. Patent No. 5,586,931 to Williams, Jr. This rejection is respectfully traversed. Applicant's claims 9-11 and 13-15 are very specifically directed to "A process for shelling a crustacean to permit removal of meat from a tail shell thereof...comprising: separating a head/body portion of said crustacean from said tail shell; providing a shelling tool having a handle and an elongate rod extending away from said handle, said elongate rod having a longitudinal slit extending inwardly from a distal end thereof, said longitudinal slit defining an upper rod fork and a lower rod fork of said elongate rod; sliding said lower rod fork into an open end of said tail shell along an inside surface of an underside of said tail shell such that said underside of said tail shell is

guided into said slit a desired distance; and rotating said tool about a longitudinal axis thereof to thereby produce a crack in said underside of said tail shell and expose the meat contained therein." These specifically claimed features of applicant's invention provide a process for quickly and easily removing the meat contained within the tail of a crawfish without damaging the meat or squeezing the prized succulent juices therefrom.

These very important features of applicant's claimed invention are simply not shown or suggested by the Williams, Jr. reference. That reference is very clearly and specifically directed to a utensil for opening elongate sections of crab leg shells in which the shell is received in the opening between a sharpened blade and a blade-protecting member of his utensil. The user then moves the utensil longitudinally along the shell to cut through it as the utensil moves linearly forward (column 9, lines 42-54). This cutting action is much like that resulting from pushing a pair of scissors along a sheet of paper while maintaining a fixed opening angle between the scissor blades. At column 3, lines 19-21, Williams, Jr. again describes this normal use of his utensil to be such that "...the sharpened edge of the blade can cut through the shell as a user grasping the handle moves the blade longitudinally along the shell." This use of the tool of Williams, Jr. will certainly result in the sharpened blade gouging the delicate meat within a crawfish shell. While this linear motion of the bladed utensil taught by Williams, Jr. will cut through most crab leg shells, the reference teaches that the utensil may be operated such that the "...sharpened edge of the blade can be brought forcefully into contact with the underside of the shell as a result of lifting

the handle to cause a forward portion of the blade-protecting member to pivot upon an upper portion of the shell, and to cause the shell to break at the location of the sharpened end of the blade. If the shell is particularly tough, the user may need to lift the handle several times during the movement of the blade along the shell, in a form of prizing motion." (column 2, lines 57-67 and column 10, lines 16-26). Thus, it is clear that in order to use his utensil in the way described by Williams, Jr., it is necessary that the tip 27 of his blade-protecting member 21 contact a rigid pivot point on a hard shell. Such pivot points exist on the hard shells of crab legs, to which the Williams, Jr. patent is directed, but do not exist on the soft tail shells of crawfish, to which applicant's invention is directed. It is therefore clear that the utensil of Williams, Jr. is adapted for use on rigid shells such as crab legs, which contain firm meat that will, to a degree, resist the compression effect caused by use of the utensil, not on the soft tail shells of crawfish, which contain a very soft and delicate meat. Moreover, the use of his cutting/prying tool in the way taught by Williams, Jr., while perhaps effective in breaking a rigid crab leg shell, would be totally ineffective in accessing the meat within the tail of a lobster or crawfish because the prizing motion of the tool would simply cause the tail to bend from one end to the other without cracking it.

Contrary to the Examiner's statements, the Williams, Jr. reference contains absolutely no showing or suggestion within the four corners of that document of applicant's specifically claimed steps of sliding his specifically-claimed tool into the open end of the tail shell a desired

distance and then rotating the tool about its longitudinal axis to thereby crack the underside of the tail shell. Mere insertion of applicant's non-bladed tool does not effect cracking of the shell; only his specifically claimed rotation of the tool following insertion performs that function. This is totally unlike the bladed tool taught by Williams, Jr., which serves to cut a crab leg shell as the tool is being inserted under and along the shell, with or without a supplemental prizing motion of the tool.

On page 2 of the outstanding Office Action, the Examiner states that "in column 9, sixth paragraph, Williams teaches that the hand tool can be used for 'the leg or other portion of the crustacean.'" On the contrary, the sixth paragraph of column 9 of the Williams, Jr. reference clearly states "As revealed in Fig. 9, the lower portion of the blade 14 is somewhat wide, whereas the upper portion of the blade has a distinctive, carefully sharpened edge 18. The blade 14 is of sturdy construction, such that the user can readily break open the shell of a crab leg or the like, without the blade bending or breaking." The Examiner also states that the teaching of this paragraph and a small amount of "common sense" teaches it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the device on a tail shell, i.e. other portion of the crustacean. Since, as set forth in detail above, the Williams, Jr. reference is replete with teachings that limit the use of his sharp-bladed tool to the hard shells of crab legs and the like and that preclude its use on soft shells, like the soft tail shells of crawfish. Thus, the "common sense" teaching on which the Examiner relies certainly cannot be gleaned from a reading of the Williams,

Jr. reference, but only from a reading of applicant's present application, which clearly amounts to the prohibited hindsight reconstruction of applicant's claimed invention in order to make an obviousness rejection.

The Examiner also states "Further, as shown in Figure 7, the user of the tool of Williams, if necessary, will rotate the tool about a longitudinal axis to produce a crack in the underside of the crustacean and expose the meat contained therein." Contrary to this erroneous statement by the Examiner, Figure 7 of the Williams, Jr. reference illustrates the way in which his tool is lifted such that the sharpened blade is raised to achieve an upward breaking of a portion of the crustacean shell. Column 5, lines 27-34 states that "Fig. 7 is a fragmentary view similar to Fig. 6, but showing the use of my device in a different mode, namely, when a particularly tough portion of shell has been encountered, it becomes possible for the user to lift the handle of the utensil, thus causing the blade-protecting member to pivot upon an exterior portion of the shell such that the sharpened blade is raised to achieve an upward breaking of a portion of the crustacean shell;" This handle-lifting action during use of the Williams, Jr. device is also described at other locations in the text of that reference, some of which are cited hereinabove. Thus, neither Figure 7 nor any other portion of the Williams, Jr. reference contains any showing or suggestion whatsoever of rotating his tool about its longitudinal axis during use, as specifically taught and claimed by applicant.

In view of the arguments set forth in detail above, which are supported by the attached Declaration Pursuant to 37 CFR 1.132 of culinary expert

Francis H. Jacquinet, it is respectfully submitted that applicant's claims 9-11 and 13-15, in addition to allowable claim 12, are clearly patentable over the Williams, Jr. reference, and that this application is now in condition for allowance. Favorable action is accordingly solicited.

Respectfully submitted,

Mark A. Poland

By

A handwritten signature in black ink, appearing to read "William E. Hein", written over a horizontal line.

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